



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 13 2018

Mr. Shawn Zinser
Chief, Regulatory Division
Department of the Army
Corps of Engineers, Jacksonville District
701 San Marco Boulevard
Jacksonville, Florida 33207-8915

Dear Mr. Zinser:

As you may know, multiple federal agencies have entered into an interagency Memorandum of Understanding (MOU) for permitting or authorizing offshore aquaculture activities in federal waters of the Gulf of Mexico.¹ The purpose of this MOU is to provide a regulatory process that will provide protection for the ocean environment and facilitate efficient coordination, consistency, and transparency among federal agencies when making permitting and authorization decisions related to aquaculture.

The U.S. Environmental Protection Agency Region 4 is processing a National Pollutant Discharge Elimination System (NPDES) permit application for an offshore aquaculture operation in federal waters of the Gulf of Mexico to be operated by Kampachi Farms, LLC.² Until recently, the EPA has been working as a Cooperating Agency with the National Marine Fisheries Service (NMFS) to develop an Environmental Assessment (EA) to support the issuance of the NPDES permit in order to comply with the requirements of the National Environmental Policy Act (NEPA) under 40 Code of Federal Regulations (CFR) Part 6.³ On September 25, 2018, the U.S. District Court for the Eastern District of Louisiana ruled that the NMFS does not have the authority to regulate aquaculture as fishing under the Magnuson-Stevens Fishery Conservation and Management Act, and vacated the NMFS' rule implementing the Gulf of Mexico Fishery Management Council's Offshore Aquaculture Fishery Management Plan.⁴ Because the NMFS no longer intends to issue a permit for the project, the EPA has decided to assume the "Lead Agency" for preparation of the EA pursuant to 40 CFR § 1501.5. The EPA will work with all Cooperating Agencies to jointly create a comprehensive NEPA analysis in an efficient and timely manner.

The purpose of this letter is to request that the U.S. Army Corps of Engineers (USACE) participate as a "Cooperating Agency" in the development of the EA. The MOU and Council on Environmental Quality's regulations at 40 CFR § 1501.6 emphasize agency cooperation in the NEPA process between federal agencies either having jurisdiction or special expertise related to a proposed action. Participation by the USACE as a Cooperating Agency would ensure that pertinent USACE legislative authorities, implementing regulations and permitting concerns are included and considered in the EA.

¹ On February 6, 2017, the Memorandum of Understanding (MOU) for Permitting Offshore Aquaculture Activities in Federal Waters of the Gulf of Mexico became effective for seven Federal agencies with permitting or authorization responsibilities.

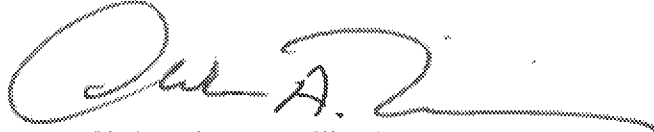
² Kampachi Farms, LLC is proposing a pilot-scale net-pen aquaculture facility within Federal waters of the Gulf of Mexico located approximately 45 miles west-southwest of Sarasota, Florida.

³ On January 16, 2018, the EPA entered into a cooperating agency agreement with the NMFS for development of an EA to support all Federal permits needed for the Kampachi Farms, LLC proposed project.

⁴ *Gulf Fishermen's Association et al. v. National Marine Fisheries Service et al.*, Case 2:16-cv-01271-JTM-KWR Document 94 (9/25/18)

Please provide a written response accepting or declining the EPA's invitation to be a cooperating agency within 30 days of the date of this letter and identify your agency's point of contact. The EPA NEPA project manager and primary point of contact for this EA will be Mr. Daniel Holliman of the NEPA Program Office. If you or your staff have any questions related to this request or the proposed project, please contact Mr. Daniel Holliman, at (404) 562-9531 or Holliman.Daniel@epa.gov. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris A. Militscher", with a long horizontal flourish extending to the right.

Christopher A. Militscher
Chief, NEPA Program Office
Resource Conservation and Restoration Division

cc: Katy Damico, U.S. Army Corp of Engineers, *via email*